

the present defendant, to whom the trustees transferred the legal title to the property in dispute.

I can see no sufficient reason why the court should first decree a transfer of this stock to the trustees, that they might then immediately afterward, be compelled to transfer it to the complainant. The legal title is in the defendant, and if that legal title has been improperly obtained, the defendant should be required to convey at once, and without circuitry, to the party ultimately entitled.

Nor, do I think, that the trustees, Mayer and Burnap, were necessary parties, as is also insisted by the defendant. They have, as I think, no interest in the suit, and against them, if before the court, no decree could be had, and consequently they cannot be considered necessary parties. *Story's Eq. Pl., sec., 231*; *Smith vs. Snow et al., 3; Mad. Rep., 13.*

Considering, then, that the plaintiff has a standing in court, to ask for relief in respect to the transactions spoken of in the bill, if he has shown himself entitled upon the merits, it becomes necessary to examine the case upon its merits, and this will be done as briefly as possible.

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The bill, as we have seen, prays that the settlement of June, 1844, may be opened, upon the ground of fraud, and that the complainant may be permitted to surcharge and falsify the account in the particulars mentioned, and in such others as may become apparent in the progress of the cause.

The allegation is, that the stated account was fraudulent in fact, and in contemplation of law, and known to the framers thereof to be such.

In the argument, however, the Chancellor understood that the charge of fraud in fact was, if not abandoned, at least not pressed, and the aid of the court was asked upon the ground that this settlement, under the peculiar circumstances attending it, though not characterized by fraud in fact, that is, by a pre-conceived and concerted design to defraud the complainant, was yet in contemplation of a court of equity, constructively fraudulent, and equally invalid as if contaminated with pre-